

REMARKS

The rejection of Claims 8 and 17 under 35 U.S.C. § 112, ¶ 2 is traversed and reconsideration as well as clarification of the rejection is respectfully requested.

Page 3 of the Office Action states that the metes and bounds of the claims cannot be determined because the Specification does not appear to teach how to determine the arrangement to enable the function recitation. Even if that statement were correct, which it is not, the function of the specification in teaching how to make and use the claimed invention has nothing to do with the claims' metes and bounds. This appears to be a *non-sequitur*.

The Office Action engages in alternative claim interpretation, again involving at least one *non-sequitur*. Applicants submit that an examiner is supposed to give a patent claim its broadest reasonable interpretation, and nothing more. Certainly, the Patent and Trademark Office is not licensed to engage in speculative alternative claim construction. That is, accepting the Examiner's statement as correct in that there is nothing inherently wrong with claiming what a device does, there is something inherently wrong with an office action considering two claim interpretations, particularly as neither or which is founded in fact or law.

As to the Office Action's first "interpretation," Applicants are confused by the reference to the prior art and to its capability. Even if true, which again it is

not, this statement has nothing to do with “metes and bounds” but seems to Applicants more like a prior art rejection. Applicants would point out that it does not logically follow that if a prior art structure contains claimed elements, then it has the ability to perform the claimed function. And capability does not even mean that the prior art teaches that a claimed function is actually being carried out.

The second “interpretation” is not understandable. The Patent and Trademark Office cannot treat a claim as if it can’t perform the recited function unless it has a factual basis to do so. No such factual basis has been set forth here and, even if it had, this wouldn’t constitute a “metes and bounds” issue under Section 112, ¶ 2. Nor is there any basis whatsoever to allege that a critical or essential element or configuration is lacking in the claims. Applicants have disclosed that structure which is sufficient in the hands of one of ordinary skill in this art to make and use the their invention without engaging in unreasonable experimentation. No adequate *prima facie* case to the contrary has been set forth in the Office Action.

The rejection of Claims 8 and 17 as being anticipated by Shibata et al., under 35 U.S.C. § 102(b) is traversed, and reconsideration is respectfully requested.

The Office Action cannot point to any teaching or suggestion in the Shibata et al., patent as regards an orifice as defined in Claim 17 and whose length is set so as to allow the formation of the deepest or longest part of the fuel

distribution in an opposite direction of the deflection of the orifice. That is, a key feature of the claimed invention herein is Applicant's recognition of the sizing or setting of the orifice length. The Shibata et al., patent on the other hand, teaches only that the end or slant face 30" of the injection port or orifice 17 is to be cut at an angle to influence the traveling distance of the fuel spray. The Shibata et al., valve is one that forms the stronger fuel spray from a part of the shorter fuel path. It is using differences in length of the fuel flow paths but not the setting or sizing of the orifice length to influence a portion of the fuel flow distribution in a direction opposite to the orifice deflection.

Reconsideration of the drawing objection is also respectfully requested, particularly in light of the foregoing comments focusing on a key ingredient or feature of the present invention. On one hand, the Office Action seems elsewhere to, characterize the quoted language in paragraph 4 as functional, i.e., what the claimed device does. But, on the other hand, it wants these functional aspects illustrated somehow, characterizing each of them as a "feature" within the meaning of 37 C.F.R. § 1.83(a). Although Applicants still adhere to their prior view, uncontroverted in the final rejection, that one of ordinary skill in the would not need these claimed recitations illustrated, they need also to reemphasize that the cited rule is intended to primarily require illustrations of purely structural features.

Applicant's undersigned attorney would welcome the opportunity to discuss the drawing requirement issue in a personal interview with the

Examiner in an effort to resolve this issue. In particular, he would appreciate any suggestions that the Examiner has in mind over and above what is already illustrated in Figs. 1, 3, 4A, 5A, 6 and 7 of this application to the extent that the objection is continued.

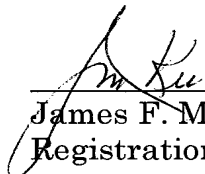
Otherwise, early and favorable action is earnestly solicited.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #056207.52747US).

Respectfully submitted,

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